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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91223971
Party	Plaintiff Universal City Studios LLC
Correspondence Address	LAWRENCE C HINKLE II FOX ROTHSCHILD LLP 997 LENOX DR BLDG 3 LAWRENCEVILLE, NJ 08648-2311 UNITED STATES tfall@foxrothschild.com, dmcgregor@foxrothschild.com, lhinkle@foxrothschild.com, IPDocket@foxrothschild.com
Submission	Motion to Compel Discovery
Filer's Name	Deanna M. McGregor
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Signature	/-d-/
Date	10/11/2016
Attachments	Motion to Compel - 91223971.pdf(666399 bytes )

**THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86479908  
For the mark: “FAST & FURIOUS”

Universal City Studios LLC,	:	Opposition No. 91223971
	:	
Opposer,	:	
	:	
v.	:	
	:	
Vatche Kiwanian d/b/a US Batta,	:	
	:	
Applicant.	:	

**OPPOSER’S MOTION TO COMPEL APPLICANT  
TO RESPOND TO OPPOSER’S DISCOVERY REQUESTS**

Opposer, Universal City Studios LLC (“Opposer”), moves the Trademark Trial and Appeal Board (the “Board”) for an order to compel discovery, namely, an order requiring Applicant, Vatche Kiwanian d/b/a US Batta (“Applicant”), to provide timely, relevant responses to Opposer’s First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Requests for Admissions which were timely served upon Applicant on August 29, 2016.

**FACTUAL BACKGROUND**

On December 8, 2015, Opposer, with Applicant’s consent, filed a motion with the Board to reset the various dates relevant to this Opposition, including, but not limited to, the date on which discovery would close. The Board granted this motion that same day.

The Board’s order provided that discovery would close on August 28, 2016. August 28, 2016 fell on a Sunday.

Opposer prepared its Initial Disclosures, First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Requests for Admissions, and served them on Applicant on Monday, August 29, 2016, by first class mail, postage prepaid, addressed to Applicant's counsel, Curt Handley, at the address set forth in the record for this Opposition in TTABVUE, namely:

Curt Handley  
Law Office of Curt Handley  
19540 Buckingham Drive, Suite 1  
Mokena, IL 60448

Each of these documents was accompanied by a Certificate of Service signed by Ms. Deanna McGregor, a paralegal employed by Opposer's counsel in its Wilmington, Delaware office. Copies of all four documents, including the Certificates of Service, are submitted as Exhibit A to this filing. In addition, attached as Exhibit B is a Declaration, signed by Ms. McGregor, setting forth the specific steps she took to effect the mailing of the discovery documents at issue, include physically placing the addressed envelope in a mail collection basket. Further, attached as Exhibit C is a Declaration of Michael Bobish, who manages the mailroom of Opposer's counsel's office in Wilmington, Delaware, attesting to the fact that all mail placed in mail collection baskets on August 29, 2016 was collected, processed, and delivered to the United States Postal Service on that day.

On September 12, 2016, Applicant filed a Motion for Summary Judgment. When Opposer's counsel received a copy of Applicant's Motion for Summary Judgment, he learned that, for reasons unknown, Applicant's counsel never received the package of discovery documents served on Applicant by Opposer on August 29, 2016. Opposer's counsel immediately

sent copies of those documents to Applicant's counsel by e-mail, which Applicant's counsel acknowledged receiving. *See Exhibit D.*

In its Motion for Summary Judgment, Applicant claimed that Opposer had failed to prosecute this Opposition, arguing that Opposer had failed to take any testimony or offer any evidence during the discovery period. Applicant's Motion for Summary Judgment was based entirely on Applicant's contention that Opposer's Initial Disclosures, First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Requests for Admissions were not timely served. On September 17, 2016, the Board refused to consider Applicant's motion because it was untimely in light of the fact that Opposer's testimony period had not yet opened.

## **ARGUMENT**

### **I. OPPOSER'S DISCOVERY DOCUMENTS WERE TIMELY SERVED ON APPLICANT.**

As noted above, the Board's order provided that discovery would close on August 28, 2016, which fell on a Sunday.<sup>1</sup>

37 CFR § 2.196 provides as follows:

Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day fixed by statute or regulation by or under this part for taking any action or paying any fee in the Office falls on a Saturday, Sunday or Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding day that is not a Saturday, Sunday or a Federal holiday.

TMBP § 112 provides examples of how this rule is intended to work in practice: "If, as set by the Board, the close of discovery falls on a Saturday, Sunday, or federal holiday within the

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<sup>1</sup> To the extent necessary, Opposer would respectfully request that the Board take judicial notice of this fact. TMBP § 704.12(a).

District of Columbia, written requests for discovery (i.e., interrogatories, requests for production of documents, and requests for admission) may be served, and discovery depositions may be taken, on the next business day.”

Each of the discovery documents served on Applicant included a Certificate of Service, stating that it was “served on Applicant on the date listed below by first class mail, postage prepaid, addressed” to Applicant’s counsel at his office in Mokena, Illinois. Each of these Certificates of Service was signed by Ms. Deanna McGregor, a paralegal employed by Opposer’s counsel, on Monday, August 29, 2016, and the complete package was deposited in the U.S. mail on that date. *See Exhibit B, Exhibit C.* As set forth in Ms. McGregor’s Declaration, she prepared copies of Opposer’s discovery requests, sealed them in envelopes addressed to Applicant’s counsel, and placed the envelopes in a mail basket for collection prior to the final mail collection on August 29, 2016. *See Exhibit B.* The Declaration of Mr. Bobish, the manager of Opposer’s counsel’s mailroom in its Wilmington, Delaware office, then affirms that all mail baskets were collected, processed, delivered to the United States Postal Service on August 29, 2016 in accordance with normal mail handling procedures. *See Exhibit C.*

TMBP § 113.04 states, in pertinent part, that “Service of papers filed in inter partes cases may be made in any of the ways specified in 37 CFR § 2.119(b). They are: . . . (4) transmission by . . . first-class mail”.

This Section goes on to provide as follows:

When service is made by mail, pursuant to 37 CFR § 2.119(b)(4), the Board considers the mailing date of the paper to be the date when the paper is deposited with the United States Postal Service, i.e., the date when custody of the paper passes to the Postal Service. As provided in 37 CFR § 2.119(a), the Board ordinarily accepts, as prima facie proof of the date of mailing, the statement signed by the filing party, or by its attorney or other authorized representative, as to the date and manner of service.

Opposer respectfully submits that the Certificates of Service described above complied with this process.

National Football League v. DNH Mgmt. LLC, 85 USPQ2d 1852 (TTAB 2008), involved facts that were quite similar (in certain respects) to those present here. In that case, discovery had opened on April 23, 2007, but opposers did not attempt to initiate any settlement discussions with the applicant until more than two months later, on July 2, 2007, and did not serve their initial discovery requests until October 22, 2007 – a date that was two days AFTER the date on which the discovery period was scheduled to close. Despite this apparently late service of discovery, the Board noted that “[b]ecause discovery was set to close on Saturday, October 20, 2007, opposers’ service of their initial discovery requests on applicant the following Monday, October 22, 2007 was, by rule, timely served. *See* Trademark Rule 2.196 and TBMP §112.” *See also* Sunrider Corp. v. Raats, 83 USPQ2d 1648, 1653 n.8 (TTAB 2007) (stating that, “[w]hen the final calendar day of a set period does not fall on a business day but on a Saturday, Sunday or Federal Holiday, Trademark Rule 2.196 provides for an extension of the otherwise expired period to the next business day”).

In sum, Opposer respectfully submits that, even though the discovery period closed on Sunday, August 28, 2016, by serving discovery on Applicant on the next succeeding business day, Monday, August 29, 2016, Opposer’s discovery was timely served.

Pursuant to TMBP §§ 407.01, 409.01, and 411.01, Applicant was required to serve responses to Opposer’s First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Requests for Admissions within thirty-five days (thirty days from the date of mailing, plus five additional days due to service by mail) after the date on which

the documents were mailed, August 29, 2016. This date fell on October 3, 2016. To date, Applicant has not served any responses upon Opposer nor has Applicant requested an extension of time in which to respond.

**II. APPLICANT SHOULD BE ORDERED TO RESPOND TO APPLICANT'S DISCOVERY.**

Opposer moves the Board for an order to compel discovery, namely, an order requiring Applicant to provide timely, relevant responses to Opposer's First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Requests for Admissions, copies of which are submitted as Exhibit A hereto.

After receipt of Applicant's Motion for Summary Judgment and prior to the filing of this motion, Opposer contacted Applicant's counsel by e-mail, explaining, in good faith, why Applicant's Motion for Summary Judgment was misplaced and incorrect, and attempting to resolve the issues presented by this motion. Despite that effort, the parties' counsel were unable to reach agreement. This declaration is supported by a copy of the e-mail from Opposer's counsel to Applicant's counsel submitted as Exhibit E hereto.

Nevertheless, Applicant's position in its Motion for Summary Judgment is clear, it does not believe that Opposer's discovery requests were timely served. As the period for responses has now elapsed and Applicant has not served any responses or requested an extension of time; it is evident that Applicant's position remains unchanged and that Applicant does not intend to respond to Opposer's outstanding discovery requests.

Opposer respectfully requests careful consideration of this motion and the accompanying materials, and the issuance of an order requiring Applicant to respond to Opposer's First Set of

Interrogatories, First Set of Requests for Production of Documents and Things, and First Requests for Admissions.

### **CONCLUSION**

For the foregoing reasons, Opposer respectfully submits that its Motion to Compel should be granted.

### **SUSPENSION OF PROCEEDINGS**

Finally, Opposer respectfully requests that, pending the Board's disposition of this Motion to Compel, all remaining deadlines in this matter be suspended pursuant to TMBP § 510.03(a), with dates to be reset following the issuance of the Board's order with respect to this Motion.

Respectfully submitted

Date: October 11, 2016

/Tristram R. Fall, III/  
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*Attorneys for Opposer*



**THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86479908  
For the mark: "FAST & FURIOUS"

Universal City Studios LLC,	:	Opposition No. 91223971
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Opposer,	:	
	:	
v.	:	
	:	
Vatche Kiwanian d/b/a US Batta,	:	
	:	
Applicant.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Opposer's Motion to Compel, and all Exhibits thereto, were served on Applicant Vatche Kiwanian dba US Batta on the date listed below by first class mail, postage prepaid, addressed as follows:

Curt Handley  
Law Office of Curt Handley  
19540 Buckingham Drive, Suite 1  
Mokena, IL 60448

Date: October 11, 2016

\_\_\_\_\_  
/d/  
Deanna M. McGregor

# EXHIBIT A

**THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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	:	
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**INITIAL DISCLOSURES OF OPPOSER UNIVERSAL CITY STUDIOS, LLC**

Opposer, Universal City Studios LLC (“Opposer”), by and through its undersigned counsel, hereby makes the attached Initial Disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) and 37 C.F.R. § 2.120.

These disclosures are preliminary as Opposer’s investigation and fact-gathering is ongoing, and Opposer has yet to develop more fully the facts concerning this opposition. Opposer will supplement these disclosures as required under Rule 26 of the Federal Rules of Civil Procedure. Nothing in these disclosures is intended to be an admission of fact, an affirmation of the existence or admissibility of any document, or an agreement with or an acceptance of any of Applicant’s legal theories or allegations. The information set forth below is provided without waiving: (1) the right to object to the use of such information for any purpose, in this or any other action, on grounds of privilege, relevance, materiality, or any other appropriate grounds; (2) the right to object to any requests involving or relating to the subject matter of the information contained in this disclosure statement; or (3) the right to revise, correct, supplement or clarify any of the information provided, at any time.

Opposer has not made a final determination regarding the documents that may be used to support current or future asserted claims or defenses.

Opposer reserves the right to supplement these Initial Disclosures.

Respectfully submitted

Date: August 29, 2016

/Tristram R. Fall, III/  
Tristram R. Fall, III  
John C. Fuller  
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997 Lenox Drive  
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Lawrenceville, NJ 08648-2311  
Tel: 215-299-2016  
Fax: 215-299-2150  
E-mail: tfall@foxrothschild.com  
jfuller@foxrothschild.com

*Attorneys for Opposer*

## **INITIAL DISCLOSURES OF OPPOSER UNIVERSAL CITY STUDIOS LLC**

1. **Fed. R. Civ. P. 26(a)(1)(A)(i) – Individuals Likely to Have Discoverable Information**

Cindy Chang, Senior Vice President, Consumer Products, North America  
100 Universal City Plaza  
Universal City, CA 91608

The person identified above may be contacted solely through the aforesigned counsel.

Opposer reserves the right to supplement this list of individuals upon further discovery and investigation.

2. **Fed. R. Civ. P. 26(a)(1)(A)(ii) – Documents in Opposer’s Possession, Custody or Control**

Opposer’s files are located at 100 Universal City Plaza, Universal City, CA 91608.

Opposer reserves the right to supplement the list of Opposer’s documents upon further discovery and investigation.

3. **Fed. R. Civ. P. 26(a)(1)(A)(iii) – Computation of Damages by Category Claimed**

Not applicable.

4. **Fed. R. Civ. P. 26(a)(1)(A)(iv) – Insurance Agreements**

Not applicable.

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	:	
Vatche Kiwanian d/b/a US Batta,	:	
	:	
Applicant.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Initial Disclosures of Opposer Universal City Studios LLC, was served today on Applicant Vatche Kiwanian dba US Batta's counsel via first class mail, addressed as follows:

Curt Handley  
Law Office of Curt Handley  
19540 Buckingham Drive, Suite 1  
Mokena, IL 60448

Date: 29 August 2016

\_\_\_\_\_  
/-d-/  
Deanna M. McGregor

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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	:	
Applicant.	:	

**OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120(d)(1) of the Trademark Rules of Practice (37 C.F.R. § 2.120(d)(1)), Opposer, Universal City Studios LLC (“Universal”), serves its First Set of Interrogatories upon Applicant, Vatche Kiwanian d/b/a US Batta (“US Batta”), to be answered fully, in writing, and under oath. A copy of US Batta’s responses shall be served upon Universal’s counsel within thirty (30) days after the date of service hereof. To the extent permitted by Rule 26(e) of the Federal Rules of Civil Procedure, these Interrogatories are to be deemed continuing and the answers hereto are to be supplemented promptly upon US Batta’s acquisition of further or additional information.

**GENERAL DEFINITIONS AND INSTRUCTIONS**

All Interrogatories are to be answered on the basis of US Batta’s knowledge or information and belief, including that of his employees, directors or agents having such knowledge. If any answer is given on information and belief, such fact should be stated in the answer.

If any information called for in any Interrogatory is being withheld on the grounds that it is subject to the attorney-client privilege or any other privilege, US Batta is hereby directed to state with respect to such Interrogatory that the information is being withheld and state the alleged ground of privilege.

The following definitions are applicable herein:

1. The terms “US Batta,” “You,” or “Yours” shall mean and refer to Applicant, Vatche Kiwanian d/b/a US Batta; its predecessors-in-interest, or controlled, controlling, or affiliated companies; and US Batta’s past and present officers, employees, agents, representatives, and attorneys, all to the fullest extent the context permits.
2. The term “US Batta’s Trademark” shall mean and refer to the mark “FAST & FURIOUS”, including, but not limited to, US Batta’s federal trademark application No. 86479908, filed on December 14, 2014, for goods described as: “alcoholic beverages produced from a brewed malt bases with natural flavors; alcoholic beverages containing fruit; alcoholic beverages except beers; alcoholic beverages of fruit; alcoholic beverages, namely, Arak; alcoholic carbonated beverages, except beer; alcoholic mixed beverages except beer; flavored brewed malt beverage; liquor and liqueur beverages, namely, Arak; rum; spirits; and, wine-based beverage, namely, piquette” in International Class 033.
3. The term “Application” shall refer to U.S. Trademark Application Serial No. 86479908.



4. The term “Opposer” or “Universal” shall mean and refer to Universal City Studios LLC, its subsidiaries, affiliates, and predecessors-in-interest, its past and present officers, directors, employees, agents and all other persons acting for it or on its behalf.
5. The term “Opposition” shall mean Universal’s Notice of Opposition, filed in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board on September 21, 2015 (Proceeding No. 91223971).
6. The term “Person” refers to both natural persons and to corporate or other business entities, limited liability companies, partnerships, groups, associations, governmental entities, or other organizations.
7. The term “Document” is used herein in its customary broad sense as defined in Federal Rule of Civil Procedure 34(a)(1), and includes, without being limited to, the original and all copies (carbon, photocopy, photographic, microfilm, or otherwise) of any advertising or promotional material (including, but not limited to, artwork, copies of drafts thereof, proofs, tear sheets, scripts, storyboards, etc.), brochures, business cards, travel tickets, lodging confirmations, lists of customers, lists of customer inquiries, rate schedules, letters, e-mails correspondence, customer or other complaints, books, journals, ledgers, working papers, invoices, contracts, purchase orders, estimates, reports, memoranda, interoffice communications, records, studies, appraisals, papers, charts, recordings of or memoranda of any conversation (by telephone or otherwise), meeting

or conference, or any other writing however produced or reproduced; all other handwritten, typed, printed, or otherwise visually or aurally reproduced materials, whether copies or originals, including, but not limited to, letters, cables, wires, memoranda, and interoffice communications; reports, notes, minutes, and recordings; drawings, blueprints, sketches, charts, photographs, microfilm records, data compilations, and movies; copyrights, copyright registration applications, patents, trademarks, patent applications, trademark applications, assignments, contracts, agreements, licenses, and other official documents and legal instruments; published material of any kind; annual reports, reports to shareholders and minutes or reports of meetings of directors or executive boards or committees; advertising or promotional literature and press releases; engineering notebooks and data; and ledgers, bills, orders, books, records, and files that are in the possession, custody or control of US Batta or any of his officers, agents, or employees and/or US Batta's attorneys. The term "Document" or "Documents" also includes all copies that are not identical to the original.

8. The term "Thing" as used herein refers to any tangible object other than a Document, and includes objects of every kind and nature such as, but not limited to, prototypes, models, specimens, computer disks and tapes, DVDs, videotapes and audiotapes.
9. "Relating to" shall mean pertaining to, making reference to, concerning, comprising, evidencing, alluding to, responding to, connected with,

commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of or having any logical or factual connection with the subject matter in question.

10. The term “Identify” as used herein means:

- (a) in the case of a natural person, to state for each person his or her (i) full name; (ii) present residence address and telephone number; (iii) present business address and telephone number; (iv) present position, business affiliation, and job description; and (v) if any of the information set forth in clauses (i)-(iv) is unknown, so state and set forth the corresponding last known such information;
- (b) in the case of a corporation or other business entity, to state for each corporation or business entity (i) its full name; (ii) its legal form (i.e., corporation, partnership, etc.) and state of incorporation or legal formation; (iii) its address and principal place of business; (iv) the identity of officers or other persons having knowledge of the matter with respect to which the corporation or entity is named; and (v) the connection to US Batta’s response; and
- (c) in the case of a document, to state for each document (i) the identity of the person(s) originating and preparing it and the sender; (ii) its general type (e.g., letter, memo, report, invoice, etc.), title, identifying number and the general nature of its subject matter; (iii) the identity of the addressees and distributees, if any;

(iv) its date of preparation; (v) its date and manner of transmission, distribution and publication, if any; (vi) the location of each copy (including title, index number and location of the file in which it is kept or from which it was removed) and the identity of the present custodian or persons responsible for its filing or other disposition; and (vii) the identity of persons who can authenticate or identify it.

11. As used herein, “and” as well as “or” shall be construed either disjunctively or conjunctively as necessary in order to bring within the scope of the request all Documents and Things which might otherwise be construed to be outside its scope.
12. As used herein, the singular shall always include the plural and the present tense shall always include the past tense.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1:**

Identify the line of business, means of making a living, job title, employer (if any) and address of employment of Applicant Vatche Kiwanian.

### **INTERROGATORY NO. 2:**

Identify by name and describe all of the goods on or in connection with which US Batta currently uses, has used, or intends to use US Batta's Trademark in the United States or in U.S. commerce (*e.g.*, use in commerce).

### **INTERROGATORY NO. 3:**

For each of the goods identified in response to Interrogatory No. 2, identify the date of first use of US Batta's Trademark on or in connection with such goods anywhere or in commerce, and identify all persons to whom such goods were offered or sold and all persons with knowledge about such offers or sales.

### **INTERROGATORY NO. 4:**

Identify and describe in detail all marketing and promotional activities that US Batta has engaged in using or referring to US Batta's Trademark, including, but not limited to, trade shows; customer presentations, visits or tests; and/or print, electronic or any other type of advertising, and, for each, state the nature of the activity, the dates, and identify all Persons involved, whether on behalf of US Batta or any third party.

### **INTERROGATORY NO. 5:**

For each of the goods identified in response to Interrogatory No. 2, identify any and all designers, manufacturers, and other producers whom US Batta currently uses, has used, or intends to use to produce those specific goods.

**INTERROGATORY NO. 6:**

For each of the goods identified in response to Interrogatory No. 2, identify the class(es) of customers (*e.g.*, retailers, wholesalers, liquor stores, beverage distributors, internet websites, etc.) to whom US Batta is selling or distributing, has sold or distributed, or intends to sell or distribute those specific goods.

**INTERROGATORY NO. 7:**

For each of the goods identified in response to Interrogatory No. 2, identify and describe US Batta's current, prior, and intended channels of trade and distribution and the geographical areas of trade in the United States for those specific goods.

**INTERROGATORY NO. 8:**

Identify all media, including, but not limited to, newspapers, magazines, trade journals, pamphlets, brochures, television, radio, internet or other global computer networks, billboards or signs and any other print, broadcast, electronic or digital media, in, on, or through which US Batta currently advertises, promotes or markets, has advertised, promoted or marketed, or intends to advertise, promote or market, US Batta's goods under or in connection with US Batta's Trademark.

**INTERROGATORY NO. 9:**

Identify representative examples of each different promotional Document or Thing used and/or being considered for use by US Batta on, for or in connection with US Batta's Trademark.

**INTERROGATORY NO. 10:**

Identify each Person or agency that currently participates, has participated, or intends to participate in the design, creation, and/or distribution of advertisements, marketing materials or promotional items in the United States for US Batta's goods under or in connection with US

Batta's Trademark, and the period of time during which each such Person or agency has participated or will participate.

**INTERROGATORY NO. 11:**

Identify any and all trade shows or fairs in the United States which US Batta has organized, promoted, and/or in which it has participated, or which US Batta intends to organize, promote and/or in which it intends to participate, in connection with goods produced under or in connection with US Batta's Trademark.

**INTERROGATORY NO. 12:**

Identify any market research (including surveys, studies, investigations and focus group inquiries) conducted by or on behalf of US Batta in the United States relating to: (a) US Batta's Trademark; and/or (b) any marks registered or used by Universal.

**INTERROGATORY NO. 13:**

For each of the goods identified in response to Interrogatory No. 2, state, by calendar quarter, the dollar volume budgeted and expended, or intended to be budgeted and expended, by US Batta to promote US Batta's Trademark in commerce in connection therewith.

**INTERROGATORY NO. 14:**

Describe any surveys, studies, analyses or inquiries made by or on behalf of US Batta relating to US Batta's Trademark or any variation of that mark.

**INTERROGATORY NO. 15:**

Identify all Persons to whom US Batta has or will grant rights to use US Batta's Trademark (or any variation thereof) in the United States, or from whom US Batta has obtained or will obtain rights to use US Batta's Trademark (or any variation thereof) in the United States, identifying any agreements (including, but not limited to, assignments, licenses, authorizations,

permissions, settlement agreements, and consents) entered into by US Batta, anticipated by US Batta, or negotiated by US Batta but not consummated, relating to the use of US Batta's Trademark in commerce.

**INTERROGATORY NO. 16:**

Identify any Documents or Things, including, but not limited to, business plans, marketing plans, manufacturing agreements, distribution agreements, license agreements, supply agreements, memoranda, correspondence, and draft proposals or agreements of any kind, reflecting US Batta's *bona fide* intention, at any time prior to or as of the date of service of this First Set of Interrogatories, to use US Batta's Trademark in commerce.

**INTERROGATORY NO. 17:**

Identify the channels of trade that are or will be used in the United States by or on behalf of US Batta in connection with the sale and/or offer for sale of the goods described in the Application, including, but not limited to, the stores, retail outlets, distributors, wholesalers, customers, potential customers and any other Persons to whom US Batta has sold or intends to sell any of the goods described in the Application.

**INTERROGATORY NO. 18:**

Identify each Person who was involved in and/or has knowledge of the conception, creation, design, selection, and/or adoption of US Batta's Trademark as a mark for goods and/or services by US Batta.

**INTERROGATORY NO. 19:**

State all facts relating to US Batta's selection and adoption of US Batta's Trademark including, without limitation, the date on which US Batta's Trademark was first considered and



adopted, the reasons for selecting US Batta's Trademark, the origin or source of inspiration for US Batta's Trademark, and any alternative marks considered.

**INTERROGATORY NO. 20:**

Identify and describe, in detail, the date and circumstances of when US Batta first became aware of each of Universal's films: "The Fast and the Furious"; "2 Fast 2 Furious"; "The Fast and the Furious: Tokyo Drift"; "Fast & Furious"; "Fast Five"; "Fast & Furious 6"; "Furious 7"; and "Fast 8" (collectively, the "Fast & Furious Films").

**INTERROGATORY NO. 21:**

Identify and describe, in detail, the date and circumstances of when US Batta first became aware of Universal's "Fast & Furious" video game (the "Fast & Furious Video Game").

**INTERROGATORY NO. 22:**

State whether a trademark search or any other type of search was conducted by or on behalf of US Batta in connection with its selection, adoption or application to register US Batta's Trademark. If so, identify all Documents and Things relating and/or referring to such search(es) and identify all Person(s) with knowledge thereof.

**INTERROGATORY NO. 23:**

Identify and describe, in detail, any challenges that US Batta has ever made to any third party, and challenges that any third party has ever made to US Batta, relating to the use of any trademark, service mark, or trade name which was considered to conflict with US Batta's Trademark or any variation thereof.

**INTERROGATORY NO. 24:**

Identify all instances of mistake or actual confusion known to US Batta resulting from the contemporaneous use of US Batta's Trademark by US Batta and any of the marks of Universal

containing “Fast” or “Furious”, giving the date of, location of, and circumstances surrounding each such instance, including the Person(s) mistaken or confused in each case and the Person(s) witnessing each such instance.

**INTERROGATORY NO. 25:**

State whether any Person has ever inquired, whether orally or in writing, in person, electronically, or otherwise, whether goods sold by US Batta or on US Batta’s behalf under US Batta’s Trademark were sponsored or endorsed by, or were/are in any way connected or affiliated with Universal or any of the Fast & Furious Films or the Fast & Furious Video Game, as a result of US Batta’s use of US Batta’s Trademark, or vice versa, giving the date of, location of, and circumstances surrounding each such instance, including the Person(s) mistaken or confused in each case and the Person(s) who received such inquiry.

**INTERROGATORY NO. 26:**

State whether US Batta or any Person acting on its behalf has obtained any statements or opinions relating to any of the issues involved in this proceeding, including, but not limited to, likelihood of confusion and dilution, and if so, identify the Person or Persons who rendered each such statement or opinion and the Person who obtained or received each such statement or opinion, and state whether it was oral or in writing.

**INTERROGATORY NO. 27:**

Identify any and all witnesses that US Batta intends to call to testify on its behalf in connection with this proceeding and state the subject matter concerning which they are each expected to testify.

**INTERROGATORY NO. 28:**

State whether US Batta has consulted with or retained the services of any expert with respect to any of the issues involved in this proceeding, and if so, identify each such expert, identify all Documents and Things upon which that expert will base his or her expert opinion, describe the subject matter concerning which he or she was consulted or retained, and provide the information required in Fed.R.Civ.P 26(a)(2)(B).

**INTERROGATORY NO. 29:**

Identify all Documents and Things upon which US Batta intends to rely in connection with this proceeding.

**INTERROGATORY NO. 30:**

Identify all trademarks and service marks under which US Batta intends to and/or sells and markets goods and services, listing the goods and services sold or marketed or intended to be sold or marketed under or in connection with each mark.

**INTERROGATORY NO. 31:**

Identify each state, county or city (including the District of Columbia) in the United States, its territories and possessions, in which US Batta maintains, owns or leases office or warehouse space.

**INTERROGATORY NO. 32:**

Identify all Documents and Things supporting, refuting or relating to the responses to the preceding Interrogatories (specifying the particular Interrogatory response to which each such Document or Thing pertains).

**INTERROGATORY NO. 33:**

Identify each Person who participated in the preparation of US Batta's responses to the foregoing Interrogatories or furnished any information in response thereto, and, for each, specify the Interrogatory response for which such Person provided information or participated in the preparation.

Respectfully submitted,

Dated: August 29, 2016

/Tristram R. Fall, III/

Tristram R. Fall, III  
John C. Fuller  
Fox Rothschild LLP  
997 Lenox Drive  
Building 3  
Lawrenceville, NJ 08648-2311  
Tel: 215-299-2016  
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E-mail: tfall@foxrothschild.com  
jfuller@foxrothschild.com

*Attorneys for Opposer*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86479908  
For the mark: "FAST & FURIOUS"

Universal City Studios LLC,	:	Opposition No. 91223971
	:	
Opposer,	:	
	:	
v.	:	
	:	
Vatche Kiwanian d/b/a US Batta,	:	
	:	
Applicant.	:	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the above OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT and any attachments thereto were served on Applicant on the date listed below by first class mail, postage prepaid, addressed as follows:

Curt Handley  
Law Office of Curt Handley  
19540 Buckingham Drive, Suite 1  
Mokena, IL 60448

Date: 29 August 2016

\_\_\_\_\_  
/-d-/  
Deanna M. McGregor

**THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86479908  
For the mark: “FAST & FURIOUS”

Universal City Studios LLC,	:	Opposition No. 91223971
	:	
Opposer,	:	
	:	
v.	:	
	:	
Vatche Kiwanian d/b/a US Batta,	:	
	:	
Applicant.	:	

**OPPOSER’S FIRST SET OF FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120(d)(2) of the Trademark Rules of Practice (37 C.F.R. § 2.120(d)(2)), Opposer, Universal City Studios LLC (“Universal”), serves its First Set of Requests For Production of Documents and Things upon Applicant, Vatche Kiwanian d/b/a US Batta (“US Batta”), to be answered fully, in writing, and under oath. Universal hereby requests that US Batta produce the following documents and things for inspection and copying, along with a written response at the offices of Universal’s counsel, Fox Rothschild LLP, 2000 Market Street, 20<sup>th</sup> Floor, Philadelphia, PA 19103, within thirty (30) days after the date of service hereof. To the extent permitted by Rule 26(e) of the Federal Rules of Civil Procedure, these Requests are to be deemed continuing and the responses thereto are to be supplemented promptly upon US Batta’s acquisition of further or additional information or documents.

## **GENERAL DEFINITIONS AND INSTRUCTIONS**

The following definitions are applicable herein:

1. The terms “US Batta,” “You,” or “Yours” shall mean and refer to Applicant, Vatche Kiwanian d/b/a US Batta, his predecessors-in-interest, or controlled, controlling, or affiliated companies; and US Batta’s past and present officers, employees, agents, representatives, and attorneys, all to the fullest extent the context permits.
2. The term “US Batta’s Trademark” shall mean and refer to the mark “FAST & FURIOUS”, including, but not limited to, US Batta’s federal trademark application No. 86479908, filed on December 14, 2014, for goods described as: “alcoholic beverages produced from a brewed malt bases with natural flavors; alcoholic beverages containing fruit; alcoholic beverages except beers; alcoholic beverages of fruit; alcoholic beverages, namely, Arak; alcoholic carbonated beverages, except beer; alcoholic mixed beverages except beer; flavored brewed malt beverage; liquor and liqueur beverages, namely, Arak; rum; spirits; and, wine-based beverage, namely, piquette” in International Class 033.
3. The term “Application” shall refer to U.S. Trademark Application Serial No. 86479908.
4. The term “Opposer” or “Universal” shall mean and refer to Universal City Studios LLC, its subsidiaries, affiliates, predecessors-in-interest, its past and present officers, directors, employees, agents and all other persons acting for it or on its behalf.

5. The term “Opposition” shall mean Universal’s Notice of Opposition, filed in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board on September 21, 2015 (Proceeding No. 91223971).
6. The term “Person” refers to both natural persons and to corporate or other business entities, limited liability companies, partnerships, groups, associations, governmental entities, or other organizations.
7. The term “Document” is used herein in its customary broad sense as defined in Federal Rule of Civil Procedure 34(a)(1), and includes, without being limited to, the original and all copies (carbon, photocopy, photographic, microfilm, or otherwise) of any advertising or promotional material (including, but not limited to, artwork, copies of drafts thereof, proofs, tear sheets, scripts, storyboards, etc.), brochures, business cards, travel tickets, lodging confirmations, lists of customers, lists of customer inquiries, rate schedules, letters, e-mails, correspondence, customer or other complaints, books, journals, ledgers, working papers, invoices, contracts, purchase orders, estimates, reports, memoranda, interoffice communications, records, studies, appraisals, papers, charts, recordings of or memoranda of any conversation (by telephone or otherwise), meeting or conference, or any other writing however produced or reproduced; all other handwritten, typed, printed, or otherwise visually or aurally reproduced materials, whether copies or originals, including, but not limited to, letters, cables, wires, memoranda, and interoffice



communications; reports, notes, minutes, and recordings; drawings, blueprints, sketches, charts, photographs, microfilm records, data compilations, and movies; copyrights, copyright registration applications, patents, trademarks, patent applications, trademark applications, assignments, contracts, agreements, licenses, and other official documents and legal instruments; published material of any kind; annual reports, reports to shareholders and minutes or reports of meetings of directors or executive boards or committees; advertising or promotional literature and press releases; engineering notebooks and data; and ledgers, bills, orders, books, records, and files that are in the possession, custody or control of US Batta or any of his officers, agents, or employees and/or US Batta's attorneys. The term "Document" or "Documents" also includes all copies that are not identical to the original.

8. The term "Thing" as used herein refers to any tangible object other than a Document, and includes objects of every kind and nature such as, but not limited to, prototypes, models, specimens, computer disks and tapes, DVDs, videotapes and audiotapes.
9. As used herein, "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary in order to bring within the scope of the request all Documents and Things which might otherwise be construed to be outside its scope.
10. As used herein, the singular shall always include the plural and the present tense shall always include the past tense.

11. Should US Batta withhold any Document requested by any of the following requests, US Batta shall, in its written response, describe such Document by specifying the following for each such document:
- (a) The date appearing on the Document and if no date appears thereon, so state and give the date or approximate date on which the Document was prepared;
  - (b) The identifying number, letter, or combination thereof, if any, and the significance of meaning of such;
  - (c) The general nature or description of the Document (i.e., whether it is a letter, memorandum, minutes of a meeting, etc.), and the number of pages of which it consists;
  - (d) The name of the person who signed the Document and if it was not signed, so state and give the name of the person or persons who prepared it;
  - (e) The name of the person to whom the Document was addressed and the name of each person, other than such addressee, to whom the Document, or a copy thereof, was sent;
  - (f) The subject matter to which the Document relates; and
  - (g) The specific claim relied on for withholding production of the Document.

## **REQUESTS FOR PRODUCTION**

1. Produce representative samples of each product that US Batta has or intends to offer or sell under or in connection with US Batta's Trademark.

2. Produce all Documents and Things sufficient to explain, describe, or demonstrate all goods which have been, are currently, or are intended to be produced by US Batta under or in connection with US Batta's Trademark, including, but not limited to, representative specimens of each type of goods identified in US Batta's response to Universal's Interrogatory No. 2 served concurrently herewith.

3. Produce all Documents and Things sufficient to explain, describe, or demonstrate US Batta's first use anywhere, and US Batta's first use in interstate commerce, of US Batta's Trademark on each type of goods that US Batta has or intends to offer or sell under or in connection with US Batta's Trademark.

4. Produce all Documents and Things sufficient to explain, describe, or demonstrate US Batta's *bona fide* intention prior to, or as of, September 21, 2016, to use US Batta's Trademark in commerce, including, but not limited to, any business advertising, marketing, promotional, branding, sales or distribution plans, strategies and forecasts, sales, manufacturing, or distribution agreements, price quotes, proposals, memoranda, correspondence, and draft proposals of any kind.

5. Produce all Documents and Things sufficient to explain, describe, or demonstrate all business, advertising, marketing, promotional, branding, sales or distribution plans, strategies and forecasts, sales, manufacturing or distribution agreements, price quotes, proposals, memoranda, correspondence, and draft proposals relating to the use of US Batta's Trademark that were produced or developed after September 21, 2015.

6. Produce all Documents and Things sufficient to explain, describe, or demonstrate the geographical areas and channels of trade and distribution in which US Batta's Trademark is currently used, has been used, or is proposed to be used in commerce.

7. Produce all Documents and Things sufficient to explain, describe, or demonstrate all advertising, marketing and promotional materials that US Batta uses, has used, or intends to use relating to goods that US Batta has or intends to offer or sell under or in connection with US Batta's Trademark, including, but not limited to, all prototypes, drafts and sketches for such advertising, marketing and promotional materials and all Documents and Things relating to the design and/or creation of such advertising and promotional materials, including, but not limited to, representative specimens of each item.

8. Produce representative specimens of all labels, hangtags, product packaging, product inserts, packaging materials, and instructions/manuals that are offered or sold under or in connection with, or that US Batta intends will be offered or sold under or in connection with, US Batta's Trademark, and which US Batta currently uses, has used, or intends to use.

9. Produce representative specimens of each printed and electronic media publication, including, but not limited to, newspapers, magazines, trade journals, press releases, public filings, communications, pamphlets, brochures, television, radio, internet or other global computer networks, billboards or signs and any other print or broadcast media, in which US Batta has advertised or promoted, is advertising or promoting, or plans to advertise or promote its goods in connection with US Batta's Trademark in commerce.

10. Produce representative specimens of all advertisement, promotional and marketing materials; included but not limited to: point-of-sale materials, circulars, flyers, posters, stickers, sales sheets, leaflets, catalogs, signs, price lists, on-line or email advertisements, print

advertisements, radio or television advertisements, or other advertising or marketing materials or promotional items, that are offered or sold under or in connection with, or that US Batta intends will be offered or sold under or in connection with, US Batta's Trademark that are used, have been used, or are intended to be used in connection with US Batta's Trademark.

11. Produce all Documents and Things sufficient to explain, describe, or demonstrate each website, web page, or online mobile application store on or through which US Batta's goods offered or sold under or in connection with, or that US Batta intends will be offered or sold under or in connection with, US Batta's Trademark have been, are currently being, or are intended to be promoted, advertised, displayed, or sold.

12. Produce all Documents and Things sufficient to explain, describe, or demonstrate each trade show, convention, exposition, conference, customer presentation, visit or testing at which US Batta's goods offered or sold under or in connection with US Batta's Trademark have been, are currently being, or are intended to be displayed, advertised, promoted and/or offered for sale.

13. Produce all Documents and Things sufficient to explain, describe, or demonstrate the class(es) of customers (*e.g.*, retailers, wholesalers, liquor stores, beverage distributors, internet websites, etc.) with whom US Batta has done, currently does, or intends to do business, and the ultimate consumers to whom US Batta offers, has offered, or intends to offer any goods offered or sold under or in connection with US Batta's Trademark in commerce.

14. Produce all Documents and Things sufficient to explain, describe, or demonstrate any past, current, or intended assignment, consent, authorization, license, franchise agreement, settlement agreement or permission between US Batta and any individual(s) or entity(ies)

permitting, authorizing, or acquiescing in, the use of US Batta's Trademark in commerce, including any amendments or modifications made thereto.

15. Produce all Documents and Things relating to any of US Batta's sales or offers to sell goods in the United States under US Batta's Trademark, including all communications with customers or potential customers of such goods.

16. Produce all Documents and Things relating to communications between any of US Batta's officers, directors, employees or agents, on the one hand, and any other person, on the other hand, with respect to US Batta's Trademark, or any variation thereof.

17. Produce all Documents and Things sufficient to explain, describe, or demonstrate US Batta's intended use of US Batta's Trademark on each type of product identified in the Application, including, but not limited to, contracts or agreements related to the design, manufacture, distribution, and/or sale of goods under US Batta's Trademark, including any correspondence related thereto.

18. Produce all Documents and Things sufficient to explain, describe, or demonstrate the annual dollar value of US Batta's actual and/or projected sales of goods are offered or sold under or in connection with US Batta's Trademark in commerce since the date of first use of the mark.

19. Produce all Documents and Things sufficient to explain, describe, or demonstrate the amount of money expended and/or budgeted by US Batta to promote goods that offered or sold under or in connection with US Batta's Trademark in commerce since the date of first use of the mark.

20. Produce all Documents and Things sufficient to explain, describe, or demonstrate your adoption of US Batta's Trademark, or any variation thereof, in the United States, including, but not limited to:

- (a) Your development, creation, and selection of US Batta's Trademark;
- (b) The origin or source of inspiration for US Batta's Trademark;
- (c) All trademarks searches, opinions, analyses, studies, reports or communications relating to US Batta's Trademark;
- (d) Your decision to adopt and apply to register US Batta's Trademark.

21. Produce all Documents and Things related to or concerning Universal's films: "The Fast and the Furious"; "2 Fast 2 Furious"; "The Fast and the Furious: Tokyo Drift"; "Fast & Furious"; "Fast Five"; "Fast & Furious 6"; "Furious 7"; or "Fast 8".

22. Produce all Documents and Things related to or concerning Universal's "Fast & Furious" video game.

23. Produce all Documents and Things concerning any awareness that US Batta had, at any time, of Universal's "Fast & Furious" mark.

24. Produce all Documents and Things related to or concerning Universal, other than pleadings and correspondence related to this Opposition.

25. Produce all Document and Things concerning any other marks that US Batta has considered adopting in lieu of US Batta's Trademark.

26. Produce all Documents and Things sufficient to explain, describe, or demonstrate any and all investigations, including, but not limited to, any trademark, service mark, trade name, internet name, or corporate name searches, relating to the adoption and use in the United States of, or the filing of the application for federal trademark application for, US Batta's Trademark.

27. Produce copies of all surveys, studies, analyses, inquiries, market research tests, demographic or consumer profile studies, and focus group inquiries relating to the ultimate purchasers or potential ultimate purchasers of US Batta's goods actually or intended to be sold, offered, advertised or promoted under US Batta's Trademark in commerce, including the results thereof.

28. Produce copies of all comparison studies, surveys, analyses, inquiries, market research tests, and all Documents and Things relating thereto, including the results thereof, concerning the goods advertised, promoted, distributed, and sold, or intended to be advertised, promoted, distributed and sold, in connection with US Batta's Trademark in commerce and the products advertised, promoted, distributed, and sold in connection with Universal's registered marks including, but not limited to, those relating to the existence of confusion or likelihood of confusion between US Batta's goods and Universal's goods or services.

29. Produce all Documents and Things sufficient to explain, describe, or demonstrate any instance occurring in the United States in which a person has been confused, mistaken, or deceived as to the source of US Batta's goods advertised, promoted, offered, or sold under US Batta's Trademark, and the source of goods and/or services advertised, promoted, offered for sale, or sold under Universal's registered marks.

30. To the extent not provided in response to Request No. 29, produce all Documents and Things that reflect, relate to or refer to any confusion or mistake by third parties as to the origin, endorsement, approval and/or sponsorship of goods or services sold, distributed or offered by US Batta under US Batta's Trademark by Universal or vice versa.

31. Produce all Documents and Things forming the basis for the denial, in whole or in part, of each of Universal's First Requests for Admissions.



32. Produce all Documents and Things referred to by US Batta in responding to Universal's First Set of Interrogatories not otherwise requested herein.

33. All Documents and Things relating to US Batta's alleged *bona fide* intent to use US Batta's Trademark on or in connection with goods in International Class 033 within the United States.

34. For each expert that US Batta intends to call to provide testimony in this proceeding, produce:

- (a) any written report provided by such expert relating to the subject matter of this proceeding;
- (b) a complete written statement of all opinions to be expressed by the expert in this proceeding, and the basis and reasons therefor;
- (c) all Documents reflecting the data or other information considered by the expert in forming his/her opinions;
- (d) all exhibits to be used by the expert as a summary of or as support for his/her opinions;
- (e) those Documents stating the qualifications of the expert, such as would be reflected in a résumé, curriculum vitae, biography, summary or otherwise;
- (f) a written list of all publications authored by the witness within the last ten years;
- (g) Documents reflecting the compensation to be paid for the expert's preparation time and time taken to provide testimony; and

- (h) a written list of any other cases in which the witness has testified as an expert at trial, in an administrative proceeding or by deposition, within the past four years.

Respectfully submitted,

Dated: August 29, 2016

/Tristram R. Fall, III/  
Tristram R. Fall, III  
John C. Fuller  
Fox Rothschild LLP  
997 Lenox Drive  
Building 3  
Lawrenceville, NJ 08648-2311  
Tel: 215-299-2016  
Fax: 215-299-2150  
E-mail: tfall@foxrothschild.com  
jfuller@foxrothschild.com

*Attorneys for Opposer*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86479908  
For the mark: "FAST & FURIOUS"

Universal City Studios LLC,	:	Opposition No. 91223971
	:	
Opposer,	:	
	:	
v.	:	
	:	
Vatche Kiwanian d/b/a US Batta,	:	
	:	
Applicant.	:	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the above OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT and any attachments thereto were served on Applicant on the date listed below by first class mail, postage prepaid, addressed as follows:

Curt Handley  
Law Office of Curt Handley  
19540 Buckingham Drive, Suite 1  
Mokena, IL 60448

Date: 29 August 2016

\_\_\_\_\_/d-/  
Deanna M. McGregor

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86479908  
For the mark: “FAST & FURIOUS”

Universal City Studios LLC,	:	Opposition No. 91223971
	:	
Opposer,	:	
	:	
v.	:	
	:	
Vatche Kiwanian d/b/a US Batta,	:	
	:	
Applicant.	:	

**OPPOSER’S FIRST SET OF REQUESTS FOR ADMISSIONS TO APPLICANT**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule 2.120(h)(1) of the Trademark Rules of Practice (37 C.F.R. § 2.120(h)(1)), Opposer, Universal City Studios LLC (“Universal”), serves its First Set of Requests for Admissions upon Applicant, Vatche Kiwanian d/b/a US Batta (“US Batta”), to be answered fully, in writing, and under oath. A copy of US Batta’s responses shall be served upon Universal’s counsel within thirty (30) days after the date of service hereof. To the extent permitted by Rule 26(e) of the Federal Rules of Civil Procedure, these Requests for Admissions are to be deemed continuing and the answers hereto are to be supplemented promptly upon US Batta’s acquisition of further or additional information.

**GENERAL DEFINITIONS AND INSTRUCTIONS**

All Requests for Admissions are to be answered on the basis of US Batta’s knowledge or information and belief, including that of his officers, employees, directors, or agents having such knowledge. If any answer is given on information and belief, such fact should be stated in the answer.

The following definitions are applicable herein:

1. The terms “US Batta,” “You,” or “Yours” shall mean and refer to Applicant, Vatche Kiwanian d/b/a US Batta, his predecessors-in-interest, or controlled, controlling, or affiliated companies; and US Batta’s past and present officers, employees, agents, representatives, and attorneys, all to the fullest extent the context permits.
2. The term “US Batta’s Trademark” shall mean and refer to the mark “FAST & FURIOUS”, including, but not limited to, US Batta’s federal trademark application No. 86479908, filed on December 14, 2014, for goods described as: “alcoholic beverages produced from a brewed malt bases with natural flavors; alcoholic beverages containing fruit; alcoholic beverages except beers; alcoholic beverages of fruit; alcoholic beverages, namely, Arak; alcoholic carbonated beverages, except beer; alcoholic mixed beverages except beer; flavored brewed malt beverage; liquor and liqueur beverages, namely, Arak; rum; spirits; and, wine-based beverage, namely, piquette” in International Class 033.
3. The term “Application” shall refer to U.S. Trademark Application Serial No. 86479908.
4. The term “Opposer” or “Universal” shall mean and refer to Universal City Studios LLC, its subsidiaries, affiliates, predecessors-in-interest, its past and present officers, directors, employees, agents and all other persons acting for it or on its behalf.

5. The term “Opposition” shall mean Universal’s Notice of Opposition, filed in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board on September 21, 2015 (Proceeding No. 91223971).
6. The term “Document” is used herein in its customary broad sense as defined in Federal Rule of Civil Procedure 34(a)(1), and includes, without being limited to, the original and all copies (carbon, photocopy, photographic, microfilm, or otherwise) of any advertising or promotional material (including, but not limited to, artwork, copies of drafts thereof, proofs, tear sheets, scripts, storyboards, etc.), brochures, business cards, travel tickets, lodging confirmations, lists of customers, lists of customer inquiries, rate schedules, letters, e-mails, correspondence, customer or other complaints, books, journals, ledgers, working papers, invoices, contracts, purchase orders, estimates, reports, memoranda, interoffice communications, records, studies, appraisals, papers, charts, recordings of or memoranda of any conversation (by telephone or otherwise), meeting or conference, or any other writing however produced or reproduced; all other handwritten, typed, printed, or otherwise visually or aurally reproduced materials, whether copies or originals, including, but not limited to, letters, cables, wires, memoranda, and interoffice communications; reports, notes, minutes, and recordings; drawings, blueprints, sketches, charts, photographs, microfilm records, data compilations, and movies; copyrights, copyright registration applications,

patents, trademarks, patent applications, trademark applications, assignments, contracts, agreements, licenses, and other official documents and legal instruments; published material of any kind; annual reports, reports to shareholders and minutes or reports of meetings of directors or executive boards or committees; advertising or promotional literature and press releases; engineering notebooks and data; and ledgers, bills, orders, books, records, and files that are in the possession, custody or control of US Batta or any of his officers, agents, or employees and/or US Batta's attorneys. The term "Document" or "Documents" also includes all copies that are not identical to the original.

7. The term "Thing" as used herein refers to any tangible object other than a Document, and includes objects of every kind and nature such as, but not limited to, prototypes, models, specimens, computer disks and tapes, DVDs, videotapes and audiotapes.
8. "Relating to" shall mean pertaining to, making reference to, concerning, comprising, evidencing, alluding to, responding to, connected with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of or having any logical or factual connection with the subject matter in question.
9. As used herein, "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary in order to bring within the

scope of the request all Documents and Things which might otherwise be construed to be outside its scope.

10. As used herein, the singular shall always include the plural and the present tense shall always include the past tense.

### **REQUESTS FOR ADMISSIONS**

1. Admit that, as of December 14, 2014, US Batta had not produced any goods under US Batta's Trademark.

2. Admit that, as of August 28, 2016, US Batta has not produced any goods under US Batta's Trademark.

3. Admit that, as of December 14, 2014, US Batta had not used US Batta's Trademark on or in connection with any goods in interstate commerce.

4. Admit that, as of August 28, 2016, US Batta has not used US Batta's Trademark on or in connection with any goods in interstate commerce.

5. Admit that US Batta was aware of one or more of Universal's films: "The Fast and the Furious"; "2 Fast 2 Furious"; "The Fast and the Furious: Tokyo Drift"; "Fast & Furious"; "Fast Five"; "Fast & Furious 6"; "Furious 7"; and/or "Fast 8" at the time that: (a) US Batta selected US Batta's Trademark for use on goods; and (b) US Batta filed the Application.

6. Admit that US Batta was aware of Universal's "Fast & Furious" video game.

7. Admit that US Batta does not have or possess any Documents or Things that demonstrate US Batta's *bona fide* intent to use US Batta's Trademark in interstate commerce.



8. Admit that US Batta does not have or possess any Documents or Things that demonstrate US Batta's plans regarding the manufacture, distribution, or sale of any goods described in US Batta's Application.

9. Admit that, if US Batta were to use the mark "Fast & Furious" on or in connection with any or all of the goods listed in the Application, consumers would likely be confused into believing that such goods were associated with Universal and the goods and services of Universal, including, but not limited to, Universal's films and video game.

10. Admit that, if US Batta were to use its mark "Fast & Furious" " on or in connection with any or all of the goods listed in the Application, consumers would likely be confused into believing that such goods were approved and/or endorsed by Universal.

11. Admit that US Batta's Trademark, if used in connection on or in connection with any or all of the goods listed in the Application, would be viewed by consumers as pointing to Universal.

Respectfully submitted,

Dated: August 29, 2016

/Tristram R. Fall, III/  
Tristram R. Fall, III  
John C. Fuller  
Fox Rothschild LLP  
997 Lenox Drive  
Building 3  
Lawrenceville, NJ 08648-2311  
Tel: 215-299-2016  
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E-mail: tfall@foxrothschild.com  
jfuller@foxrothschild.com

*Attorneys for Opposer*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86479908  
For the mark: "FAST & FURIOUS"

Universal City Studios LLC,	:	Opposition No. 91223971
	:	
Opposer,	:	
	:	
v.	:	
	:	
Vatche Kiwanian d/b/a US Batta,	:	
	:	
Applicant.	:	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the above OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS TO APPLICANT and any attachments thereto were served on Applicant on the date listed below by first class mail, postage prepaid, addressed as follows:

Curt Handley  
Law Office of Curt Handley  
19540 Buckingham Drive, Suite 1  
Mokena, IL 60448

Date: 29 August 2016

\_\_\_\_\_-d-\_\_\_\_\_  
Deanna M. McGregor

## EXHIBIT B

**THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86479908  
For the mark: "FAST & FURIOUS"

Universal City Studios LLC,	:	Opposition No. 91223971
	:	
Opposer,	:	
	:	
v.	:	
	:	
Vatche Kiwanian d/b/a US Batta,	:	
	:	
Applicant.	:	

**DECLARATION OF DEANNA MCGREGOR  
IN SUPPORT OF OPPOSER'S MOTION TO COMPEL**

I, Deanna M. McGregor, declare that:

1. I am paralegal in Fox Rothschild LLP's Wilmington, Delaware, office. I have personal knowledge of the matters set forth herein.
2. On Monday, August 29, 2016, I prepared copies of Opposer, Universal City Studios LLC's Initial Disclosures, First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Requests for Admissions for mailing to counsel for Applicant, Vatche Kiwanian d/b/a US Batta.
3. I placed copies of these documents in an appropriate envelope addressed to Curt Handley, Law Office of Curt Handley, 19540 Buckingham Drive, Suite 1, Mokena, IL 60448.
4. I placed the addressed, sealed envelope containing Universal City Studios LLC's Initial Disclosures, First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Requests for Admissions in a mail collection basket in our Wilmington, Delaware office.

5. The envelope was placed in the mail basket prior to the end of the business day on Monday, August 29, 2016.

6. Accordingly, upon depositing the envelope in the mail basket, I understood that it would be collected by mailroom staff, processed, and sent to the United States Postal Service that day, Monday, August 29, 2016.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11<sup>th</sup> day of October 2016 in Wilmington, Delaware.

By:           /-d-/            
Deanna M. McGregor  
Fox Rothschild LLP

# EXHIBIT C

**THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 86479908  
For the mark: "FAST & FURIOUS"

Universal City Studios LLC,

Opposer,

v.

Vatche Kiwanian d/b/a US Batta,

Applicant.

Opposition No. 91223971

**DECLARATION OF MICHAEL BOBISH  
IN SUPPORT OF OPPOSER'S MOTION TO COMPEL**

I, Michael Bobish, declare that:

1. I am a Facilities Manager for Parcels, Inc. and I have personal knowledge of the matters set forth herein.

2. Pursuant to an agreement between Parcels, Inc. and Fox Rothschild LLP, Parcels, Inc. is responsible for, among other things, all mail services at Fox Rothschild LLP's Wilmington, Delaware office (the "Office").

3. Among other responsibilities, I oversee the mailroom and all mail/parcel services within the Office.

4. Outgoing mail is placed in the baskets throughout the Office.

5. I collect the mail from the baskets periodically during each business day and, at the close of each business day, perform a final mail collection from each basket.

6. Pursuant to our procedures, mail collected from the various baskets throughout the Office is brought to the mailroom for processing.

7. As part of our mail processing, each parcel is stamped with appropriate postage.

8. I deliver the stamped mail parcels to the United States Postal Service each evening.

9. I am not aware of any mail or other parcel which was placed in a mail basket within the Office which was not processed and delivered to the United States Postal Service in accordance with our mail processing procedure on August 29, 2016.

10. Accordingly, to the best of my knowledge, any mail parcel that was placed in a mail basket within the Office on August 29, 2016 was duly delivered to the United States Postal Service on that date.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11<sup>th</sup> day of October, 2016 in Wilmington, Delaware.

By: 

Michael Bobish



## EXHIBIT D

## Fall, Tristram

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**From:** Curt Handley, Esq. <curt@intuitlaw.com>  
**Sent:** Tuesday, September 13, 2016 2:49 PM  
**To:** Fall, Tristram  
**Subject:** Re: "FAST & FURIOUS" -- Opposition No. 91223971 -- Discovery

Tris,

I confirm receipt of this email, but will take no further action with them until such time as the Board rules on my motions and of course, the ones you will file shortly.

Thanks,  
Curt

**From:** Fall, Tristram  
**Sent:** Tuesday, September 13, 2016 11:42 AM  
**To:** Curt Handley, Esq.  
**Subject:** "FAST & FURIOUS" -- Opposition No. 91223971 -- Discovery

Curt --

As per my prior e-mail, attached are copies of the discovery that was served on you on Monday, August 29, 2016 in connection with Opposition No. 91223971.

In particular, attached are copies of our Initial Disclosures, First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Requests for Admissions.

Please confirm receipt of this e-mail and all four attachments.

If you would like us to send you a set by regular mail, please let me know and we will do so.

(I can't imagine what happened to our package.)

Thanks again.

**Tris Fall**  
Attorney at Law  
**Fox Rothschild LLP**  
[tfall@foxrothschild.com](mailto:tfall@foxrothschild.com)  
215-299-2016

# EXHIBIT E

## Fall, Tristram

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**From:** Curt Handley, Esq. <curt@intuitlaw.com>  
**Sent:** Tuesday, September 13, 2016 2:48 PM  
**To:** Fall, Tristram  
**Subject:** Re: "FAST & FURIOUS" -- Motions for Summary Judgment

Tris,

Totally understand.

From my side, your discovery was sent by US mail. I didn't receive any discovery request noted for Case 91223971, only for Case 91224148, and again, the date of receipt was after both periods of discovery had closed for both cases.

That all aside, the fact is that my client has sat for 9 months with no action on your part to move the case forward.

So I would say that long delay represents a prejudice to my client to now allow you to resurrect either case by arguing your date of mailing fell within the last day of discovery... especially, when I didn't even receive a discovery request at all for Case 91223971... and mind you, these are separate cases, as the actions were never formally consolidated, so a discovery request would be due for both.

All formality aside, I find you among the most professional and likeable attorneys I have had the privilege to work with, despite us being on separate sides of the table. As such, I am happy for you to proceed in how you best see fit to defend your client. If the Board decides I am wrong and we must respond to your discovery request, as per statute, I will be given time to comply and most certainly will respond as there will be official pressure for my client to do so.

However, until such a decision is made, I have to represent my client to the best of my ability and as I read the statute cited, I am within my rights to seek Summary Judgment just as you are with yours to dispute my motion and seek my client's compliance.

I look forward to your response.

Sincerely,  
Curt

**From:** Fall, Tristram  
**Sent:** Tuesday, September 13, 2016 11:41 AM  
**To:** Curt Handley, Esq.  
**Subject:** "FAST & FURIOUS" -- Motions for Summary Judgment

Curt --

Let me begin by apologizing for my failure to formally respond to your client's settlement proposal. However, given that it expired last December, I didn't think a formal response was necessary.

I am in receipt of your Motions for Summary Judgment on the two pending Oppositions -- Nos. 91223971 and 91224148 -- both for the mark "FAST & FURIOUS".

I have to say that I'm quite surprised that you have not received our discovery for Opposition No. 91223971. It was mailed on Monday, August 29th. I will arrange to get you another copy immediately.

With regard to your Motions, I believe that your arguments are misplaced and incorrect. My first inclination was to file responses with the Board to that effect, along with Motions to Compel.

However, 37 CFR Section 2.120(e) requires that such a Motion "be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion but the parties were unable to resolve their differences."

Accordingly, I am contacting you to ask that you consider my arguments (set forth below), withdraw your Motions for Summary Judgment, and comply with the discovery that was served.

You are, of course, free to disagree with my analysis. In that event, please let me know and I will file my own motions with the Board. In either event, Section 2.120(e) will have been complied with.

As you noted in your Motion, the Order issued by the Board on December 8, 2015 stated that discovery in Opposition No. 91223971 would close on August 28, 2016. On this we agree.

However, August 28, 2016 fell on a Sunday.

37 CFR Section 2.196 provides as follows: "Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day fixed by statute or regulation by or under this part for taking any action or paying any fee in the Office falls on a Saturday, Sunday or Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding day that is not a Saturday, Sunday or a Federal holiday."

TMBP Section 112 provides examples of how this rule works in practice: "If, as set by the Board, the close of discovery falls on a Saturday, Sunday, or federal holiday within the District of Columbia, written requests for discovery (i.e., interrogatories, requests for production of documents, and requests for admission) may be served, and discovery depositions may be taken, on the next business day."

Each of the discovery documents served on you included a Certificate of Service, stating that it was "served on Applicant on the date listed below by first class mail, postage prepaid, addressed" to your address in Mokena, Illinois. The Certificates of Service for Opposition No. 91223971 were signed by my paralegal, Deanna McGregor, on Monday, August 29, 2016, and were deposited in the U.S. mail on that date. The Certificates of Service for Opposition No. 91224148 were signed by me, on Tuesday,

September 6, 2016 and were deposited in the U.S. mail on that date.

TMBP Section 113.04 states, in pertinent part, that "Service of papers filed in inter partes cases may be made in any of the ways specified in 37 CFR § 2.119(b). They are: . . . (4) transmission by . . . first-class mail".

This Section goes on to provide: "When service is made by mail, pursuant to 37 CFR § 2.119(b)(4), the Board considers the mailing date of the paper to be the date when the paper is deposited with the United States Postal Service, i.e., the date when custody of the paper passes to the Postal Service. As provided in 37 CFR § 2.119(a), the Board ordinarily accepts, as prima facie proof of the date of mailing, the statement signed by the filing party, or by its attorney or other authorized representative, as to the date and manner of service."

The Certificates of Service described above complied with this process.

The situation regarding Opposition No. 91224148 is virtually identical; the dates are just a week later.

As you correctly noted, the Board's Order stated that discovery in Opposition No. 91224148 would close on September 4, 2016. However, September 4, 2016 fell on a Sunday. And Monday, September 5, 2016, was Labor Day -- a federal holiday. Accordingly, we had until Tuesday, September 6th to serve the discovery, which we did.

In sum, your position that the service of discovery was untimely is mistaken. Because the deadline (in one case) fell on a Sunday, we had until Monday, August 29th to serve discovery, and (in the other case) the deadline fell on a Sunday, the day before a federal holiday, we had until Tuesday, September 6th to serve discovery. We met both deadlines. Our discovery was sent, by U.S. mail, on August 29th (in one case) and September 6th (in the other case), each accompanied by Certificates of Service.

In light of the foregoing, I would ask that you withdraw your Motions for Summary Judgment and agree to comply with our discovery requests.

If you decline to do so, or if I have not heard back from you by the end of the day tomorrow (Wednesday, September 14, 2016), I will proceed to file appropriate responses to your Motions and Motions to Compel.

Thank you for your consideration.

**Tris Fall**  
Attorney at Law  
**Fox Rothschild LLP**  
[tfall@foxrothschild.com](mailto:tfall@foxrothschild.com)  
215-299-2016